IN THE SUPREME COURT OF THE
STATE OF OREGON

STATE OF OREGON,
Respondent on Review,
v.
AUSTIN BRYAN SUTTON,
Petitioner on Review.
(CC 22CR21757) (CA A182181) (SC S072377)

En Banc

On review from the Court of Appeals.*

Argued and submitted on June 9, 2026.

Zachary Lovett Mazer, Deputy Public Defender, Oregon Public Defense Commission, Salem, argued the cause and filed the brief for petitioner on review. Also on the brief was Ernest G. Lannet, Chief Defender, Criminal Appellate Section.

Christopher A. Perdue, Assistant Attorney General, Salem, argued the cause and filed the briefs for respondent on review. Also on the brief was Dan Rayfield, Attorney General, and Paul L. Smith, Solicitor General.

PER CURIAM

The petition for review is dismissed as improvidently allowed.

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* On appeal from Washington County Circuit Court, Brandon M. Thompson, Judge. 343 Or App 603 (2025) (nonprecedential memorandum opinion).

PER CURIAM

In this case, the petition for review raised several issues, including whether there is a "public safety" exception to the general requirement, under Article I, section 12, of the Oregon Constitution, that, before questioning a person in police custody or in otherwise "compelling circumstances," the police advise the person, at a minimum, that they have the "right to remain silent and to consult with counsel and that any statements that the person makes may be used against the person in a criminal prosecution." *State v. Vondehn*, 348 Or 462, 474, 236 P3d 691 (2010);[1] *see State v. Roble-Baker*, 340 Or 631, 638, 136 P3d 22 (2006) (advisal of rights required when person is in "'full custody'" or in circumstances that "'judges would and officers should'" recognize as compelling (quoting *State v Smith*, 310 Or 1, 7, 791 P2d 836 (1990))); *see also State v. Reed*, 371 Or 478, 485 n 4, 538 P3d 195 (2023) (noting that Article I, section 12, requires that the person receive a "*Miranda*-like" warning, but, for ease of reference, the court often describes it as a "*Miranda* warning," using the name of the case defining the analogous right under the federal constitution).

The United States Supreme Court has long recognized such an exception under the Fifth Amendment to the federal constitution. *See New York v. Quarles*, 467 US 649, 655-59, 104 S Ct 2626, 81 L Ed 2d 550 (1984) (where the victim of an alleged rape described the assailant, gave his location, and said that he was carrying a gun, the officer was permitted, after locating and handcuffing the suspect, to ask him where the gun was without first advising of *Miranda* rights). However, this court has not had occasion to determine whether a comparable exception exists under Article I, section 12, and, because the Court of Appeals viewed any potential error in that regard to be harmless, that court declined to reach that question in this case. *State v. Sutton*, 343 Or App 603, 605-06 (2025) (nonprecedential memorandum opinion) (holding, under *Quarles*, that defendant's Fifth Amendment rights had not been violated and that, due to other admissible evidence, any violation of state

[1] This court has not foreclosed the possibility that the Oregon Constitution requires an advisal of rights that goes beyond this.

constitutional rights was harmless). Cognizant that the question had long evaded consideration by our appellate courts, and recognizing this court's obligation to independently construe the provisions of the Oregon Constitution despite there being controlling authority regarding analogous provisions of the federal constitution, *see, e.g.*, *State ex rel Juv. Dept. v. Rogers*, 314 Or 114, 118, 836 P2d 127 (1992) (so stating), we allowed the petition for review.

The question whether a "public safety" exception exists under Article I, section 12, remains a significant one, and the answer is far from obvious. When fulfilling our duty to independently interpret the Oregon Constitution, this court has more than once recognized that the nature of—and reasoning behind—various provisions of the state constitution differ from the principles animating analogous provisions of the United States Constitution. *See, e.g.*, *State v. De Witt Simons*, 375 Or 70, 79, 587 P3d 311 (2026) (distinguishing a person's right to privacy as guaranteed by Article I, section 9, from the Fourth Amendment's protections based upon reasonable expectations of privacy). But, having reviewed the parties' briefing and the record in this case, we have reached the conclusion that this case does not present the issue in a manner that would facilitate a full exploration of that issue. Thus, we leave for another day the significant issue that petitioner raised.

The petition for review is dismissed as improvidently allowed.